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January 3, 2020

Via ECF

Hon. Vernon S. Broderick
Hon. George B. Daniels
United States District Court
Southern District of New York
New York, N.Y. 10007

Re: Franco et al. v. Carranza et al.
19 CV 11937 (GBD)

Dear Judge Broderick and Judge Daniels:

On behalf of Defendants in the above-referenced action, we write to seek clarification of an Order To Show Cause (Dkt. No. 4) (“Order”), entered yesterday apparently by Judge Broderick. As Judge Broderick will recall, and as Judge Daniels may be aware, the parties appeared yesterday before Judge Broderick as the Part 1 judge because, we were told, Judge Daniels is out of the office this week. At this appearance, Judge Broderick ordered a briefing schedule on Plaintiffs’ application for preliminary injunctive relief. Because the briefing schedule is at odds with the Order, we write to ask that the Order be modified in light of the previously agreed-upon briefing schedule.

Although the Order requires an appearance by all counsel on January 8, 2020 at 9:45 a.m., a briefing schedule was set yesterday as follows: Defendants’ opposition papers due by noon on January 13, 2020, and Plaintiffs’ reply due by close of business on January 14, 2020. An appearance date was not set in contemplation of Judge Daniels’ return next week. It appears that the Order and Judge Broderick’s Minute Entry, filed earlier and confirming the briefing schedule, are in conflict with each other.

Accordingly, we respectfully request that the Order be modified to first allow briefing by the schedule ordered by Judge Broderick at the initial appearance. Second, we respectfully request that any appearance before Judge Daniels be scheduled at the Court’s convenience *after* January 14, 2020, when Plaintiffs’ application will be fully briefed.

This is the first such request Defendants have made. We have communicated with Karl Ashanti, Esq., Plaintiffs' counsel, and though Mr. Ashanti conceded in Court before Judge Broderick that there is no risk of harm to the Student K.C., imminent or otherwise, he now refuses to consent to this request. As his explanation for this refusal, counsel asked that we reproduce the following, verbatim: "Pendency is a procedural right, concerning which 'access to immediate interim relief is essential for the vindication of this particular IDEA right.' Murphy v. Arlington Cent. Sch. Dist. Bd. of Educ., 297 F.3d 195, 200 (2d Cir. 2002) (emphasis added); see also Arlington Cent. Sch. Dist. v. L.P., 421 F. Supp. 2d 692, 696 (S.D.N.Y. 2006) ('Pendency has the effect of an automatic injunction, which is imposed without regard to such factors as irreparable harm, likelihood of success on the merits, and a balancing of the hardships.') (citing Zvi D. v. Ambach, 694 F.2d 904, 906 (2d Cir. 1982)) (emphasis added)."

We appreciate the Court's consideration of this matter.

Respectfully yours,

s/

Chlarens Orsland
Assistant Corporation Counsel

Andrew J. Rauchberg
Assistant Corporation Counsel

cc: Counsel of record
Via ECF

Application GRANTED. The parties will abide by the briefing schedule set by Judge Broderick on January 2, 2020 (Dkt. #4). The show cause hearing is hereby ADJOURNED *sine die*. The Court will schedule the show cause hearing at a later date, if necessary.

Dated: January 7, 2020
New York, New York

SO ORDERED.



HON. KATHERINE POLK FAILLA
UNITED STATES DISTRICT JUDGE